

**RESOLUTION GRANTING THIRD ROUND SUBSTANTIVE CERTIFICATION #36-09**

**Allendale Borough, Bergen County**

WHEREAS, on December 31, 2008, Allendale Borough, Bergen County, petitioned the Council on Affordable Housing (COAH) for substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation; and

WHEREAS, pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:96-3.5, on January 16, 2009, the Borough published notice of its petition in *The Record*, which is a newspaper of general circulation within the County; and

WHEREAS, two objections to the plan were received by COAH from Calm Development, LLC (Calm Development) and Allendale Whitney, LLC (Allendale/Whitney) during the 45-day objection period, which ended March 2, 2009; and

WHEREAS, mediation between Allendale and Calm Development took place on June 4, 2009; and

WHEREAS, the mediator determined that there was no basis for an agreement between Allendale and CALM and mediation was therefore concluded without resolving Calm Development's objections; and

WHEREAS, the mediator determined that there are no material issues of contested fact arising out of mediation between Allendale and CALM which necessitate referral to the Office of Administrative Law; and

WHEREAS, mediation between the Borough and Allendale/Whitney took place on June 23, 2009; and

WHEREAS, mediation between Allendale and Allendale/Whitney resulted in a mediated agreement between the parties and mediation was concluded on September 3, 2009; and

WHEREAS, a Mediation Report dated September 4, 2009 (found as an appendix to Exhibit A) was circulated to the service list for a 14-day comment period; and

WHEREAS, no comments to the mediation report were received by COAH; and

WHEREAS, Allendale Borough's fair share plan addresses a total 1987-2018 affordable housing obligation of 161 units, consisting of a four-unit rehabilitation share, a 137-unit prior round obligation and a 20-unit projected growth share obligation pursuant to N.J.A.C. 5:97; and

WHEREAS, COAH staff has reviewed the Borough's Housing Element and Fair Share Plan, which is incorporated by reference herein; and

WHEREAS, the Borough proposes to address its four-unit rehabilitation share by participating in the Bergen County Home Improvement Program; and

WHEREAS, Allendale proposes to address its 137-unit prior round obligation with 14 units and 12 rental bonuses for family rental units included in two inclusionary developments; 21 supportive and family rental units and 21 rental bonuses in two municipally sponsored, 100 percent affordable developments; 12 owner-occupied units in two inclusionary developments; 15 age-restricted rentals and one age-restricted rental bonus in a municipally sponsored, 100 percent affordable development; and 44 regional contribution agreement (RCA) units through three transfer contracts that were approved in prior round certifications; and

WHEREAS, Allendale's plan to address its 137-unit prior round obligation results in a total of 140 units and bonuses; and

WHEREAS, Allendale proposes to address its 20-unit projected growth share obligation with a one-unit expansion of its existing Allendale Senior Housing rental development; five supportive shared housing bedrooms; four age-restricted rental units; seven owner-occupied family units; and three family rental units; and

WHEREAS, pursuant to N.J.A.C. 5:96-6.2(a)2, on September 14, 2009, COAH issued a Compliance Report (attached as Exhibit A and incorporated by reference herein) reviewing Allendale's petition and recommending approval of Allendale Borough's petition for third round substantive certification; and

WHEREAS, there was a 14-day period to submit comments to the COAH Compliance Report pursuant to N.J.A.C. 5:96-6.2(b) and COAH received comments from Calm Development that have been responded to in a separate report (attached hereto as Exhibit B); and

WHEREAS, the comments received from Calm Development do not alter the COAH Compliance Report.

NOW THEREFORE BE IT RESOLVED that COAH accepts the mediator's report dated September 4, 2009; and

BE IT FURTHER RESOLVED, that the comments submitted on behalf of Calm Development do not alter the conclusions or recommendations of the COAH compliance Report dated September 14, 2009; and

BE IT FURTHER RESOLVED, that the Housing Element and Fair Share Plan submitted by Allendale comport to the standards set forth at N.J.S.A. 52:27D-314 and meet the criteria for third round substantive certification pursuant to N.J.A.C. 5:96-6.3; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:96-6.2(a), after having reviewed and considered all of the above, COAH hereby grants third round substantive certification to Allendale Borough; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:96-6.3(e), Allendale Borough shall adopt all implementing ordinances within 45 days of receiving final substantive certification; and

BE IT FURTHER RESOLVED that, the Borough shall adopt, by resolution, the approved affirmative marketing plan within 45 days of the grant of substantive certification; and

BE IT FURTHER RESOLVED that if the Borough fails to timely adopt its Fair Share Ordinances, COAH's grant of substantive certification shall be void and of no force and effect; and

BE IT FURTHER RESOLVED that Allendale shall submit certified copies of the adopted ordinances to COAH within seven days of adoption; and

BE IT FURTHER RESOLVED that Allendale shall comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the Borough's actual growth pursuant to N.J.A.C. 5:97-2.5; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:96-10.1, COAH shall conduct biennial plan evaluations upon substantive certification of Allendale's Housing Element and Fair

Share Plan to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing; and

BE IT FURTHER RESOLVED that if upon any biennial review the difference between the number of affordable units constructed or provided in Allendale and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a prorated production shortage of 10 percent or greater, the Borough is not adhering to its implementation schedule pursuant to N.J.A.C. 5:97- 3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, then the Council may direct the municipality to amend its plan to address the shortfall; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:97-2.5(e), if the actual growth share obligation determined is less than the projected growth share obligation, Allendale shall continue to provide a realistic opportunity for affordable housing to address the projected growth share; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:96-6.3(b), Allendale's substantive certification shall remain in effect until December 31, 2018; and

BE IT FURTHER RESOLVED that any changes to the facts upon which this substantive certification is based or any deviations from the terms and conditions of this substantive certification which affect the ability of Allendale Borough to provide for the realistic opportunity of its fair share of low- and moderate-income housing and which the Borough fails to remedy, may render this certification null and void.

I hereby certify that this resolution was  
duly adopted by the Council on Affordable  
Housing at its public meeting on October 14, 2009

A handwritten signature in black ink, reading "Renée Reiss". The signature is fluid and cursive, with the first name "Renée" and last name "Reiss" clearly distinguishable.

Renée Reiss, Secretary  
Council on Affordable Housing

## **EXHIBIT A**



***Council on Affordable Housing  
Compliance Report  
September 14, 2009***



**Municipality:** Allendale Borough  
**County:** Bergen

**COAH Region:** 1  
**Planning Area:** 1  
**Special Resource Area:** None

**Housing Element and Fair Share Plan Adopted:** December 29, 2008  
**Petition for 3<sup>rd</sup> Round Substantive Certification:** December 31, 2008  
**Completeness Determination:** January 9, 2009  
**Date of Publication:** January 16, 2009

**Objections Received:** Calm Development, LLC  
Allendale Whitney, LLC

**Petition Includes:**

**VLA:** No  
**GPA:** No  
**Waiver:** No

**Date of Site Visit:** September 11, 2009

**History of Approvals:**

	<b>COAH</b>	<b>JOC</b>
<b>First Round:</b>		02/25/91
<b>Second Round:</b>	10/01/03	
<b>Extended Certification:</b>		

**Plan Preparer:** Kathleen Grady, PP, AICP - Clarke, Caton, Hintz

**Municipal Housing Liaison:** Gwen McCarthy

***SUMMARY OF FAIR SHARE OBLIGATION***

<b>Rehabilitation Share</b>	<b>4</b>
<b>Prior Round Obligation</b>	<b>137</b>
<b>Projected Growth Share Obligation (Net)</b>	<b>20</b>

***ACTUAL GROWTH and GROWTH SHARE through September 30, 2008<sup>1</sup>***

<b>Res Units</b>	<b>Actual Res Growth Share</b>	<b>Jobs</b>	<b>Actual Non-Res Growth Share</b>	<b>Actual TOTAL Growth Share</b>
2	0.4 units	36	2.25 units	3 units

***COMPLIANCE PLAN SUMMARY***

<b>Obligation</b>	<b>Credit/ Mechanism Type</b>	<b>Units Completed</b>	<b>Units Proposed</b>	<b>TOTAL</b>
<b>Rehabilitation: 4 units</b>				
<b>Credits</b>	Post-April 1, 2000	0		0
<b>Programs</b>	County/Municipal		4	4
<b>Rehabilitation Subtotal</b>				<b>4</b>
<b>NEW CONSTRUCTION:</b>				
<b>Prior Round: 137 units</b>				
<b>Credits</b>	Prior Cycle	0		0
	Post-1986	27		27
	RCA	44		44
<b>Proposed Mechanisms</b>	Inclusionary Zoning		25	25
	Supportive/Special Needs		10	10
<b>Prior Round Bonuses</b>	Rental	23	10	33
	Age-Restricted Rental	1		1
<b>Prior Round Subtotal</b>				<b>140</b>
<b>Growth Share: 20 units</b>				
<b>Proposed Mechanism(s)</b>	Supportive/Special Needs Housing		5	5
	Municipally Sponsored Family		10	10
	Municipally Sponsored Age-restricted		5	5
<b>Growth Share Subtotal</b>				<b>20</b>

<sup>1</sup> This growth share number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.5; therefore, the actual growth share may vary.

## **I. HOUSING ELEMENT**

Pursuant to N.J.S.A. 40:55D-28(b), the Housing Element is a required section of the Municipal Master Plan. The Housing Element must be designed to achieve the goal of access to affordable housing to meet existing and future housing needs, with special attention given to low- and moderate-income households. The housing needs analysis must include demographic information on existing and projected housing stock and employment characteristics, a quantification of low- and moderate-income housing need, and a consideration of the lands within the municipality that are most appropriate to accommodate such housing. Allendale's Housing Element includes sufficient information regarding housing stock, demographic and employment characteristics and population trends pursuant to N.J.S.A. 52:27D-310.

Pursuant to N.J.A.C. 5:97-2.1(b), the Housing Element must also set forth the municipality's fair share obligation, which is the sum of the rehabilitation share, the prior round obligation, and the growth share.

### **A. Rehabilitation Share**

The rehabilitation share is the number of existing housing units within a municipality as of April 1, 2000, that are both deficient and occupied by households of low or moderate income. As indicated in Appendix B of N.J.A.C. 5:97, Allendale has a rehabilitation share of four units.

### **B. Prior Round Obligation**

The prior round obligation is the cumulative 1987-1999 new construction obligation provided in Appendix C of N.J.A.C. 5:97. Allendale has a prior round obligation of 137 units.

### **C. Projected Growth Share**

The projected growth share is initially calculated based on household (residential) and employment (non-residential) 2004-2018 projections. Pursuant to Appendix F of N.J.A.C. 5:97, Allendale has a residential growth projection of 268 units and no non-residential growth which results in an initial projected growth share obligation of 54 affordable units. However, 166 units of the Borough's projected growth is a direct result of inclusionary and affordable development, that addresses the prior round obligation, proposed to be built after January 1, 2004. After subtracting these allowable exclusions as itemized in Worksheet A (attached hereto as Appendix

A), Allendale's residential projection is reduced to 102 units. Therefore, Allendale's total projected growth share for the period 1999-2018 is 20 affordable units consisting of a 20-unit projected residential growth share and a zero-unit projected non-residential growth share.<sup>2</sup>

#### **SUMMARY OF FAIR SHARE OBLIGATION**

<b>Rehabilitation Share</b>	<b>4</b>
<b>Prior Round Obligation</b>	<b>137</b>
<b>Projected Growth Share Obligation (Net)</b>	<b>20</b>

## **II. FAIR SHARE PLAN**

A Fair Share Plan, as required under N.J.A.C. 5:97-3.1, describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address a municipality's rehabilitation share, prior round obligation, and growth share obligation and includes the draft ordinances necessary to implement that plan. Affordable housing must be provided in direct proportion to the growth share obligation generated by the actual growth.

Allendale's Fair Share Plan, and the supporting documentation, as augmented by COAH's receipt of additional information requested in a report dated May 19, 2009, incorporated by reference therein, address the requirements of N.J.A.C. 5:97-3.1 as follows:

### **A. Plan to Address Rehabilitation Share**

#### **Rehabilitation Share Credits**

Allendale's Housing Element and Fair Share Plan does not include a request for rehabilitation credit.

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<sup>2</sup> Pursuant to N.J.A.C. 5:97-2.2(d), Allendale's net residential projection of 102 is divided by 5 to yield 20.4 units and the nonresidential projection of 0 jobs is divided by 16 to yield 0 units. Allendale's total projected growth share is therefore 20 units ( $20.4 + 0$ ).

**Proposed Rehabilitation Program(s)**

***Bergen County Home Improvement Program***

Allendale will utilize the Bergen County Home Improvement Program to address four units of its rehabilitation obligation. Four units will be addressed through continued participation in the Bergen County Home Improvement Program. An inter-local services agreement, which makes Community Development Block Grant (CDBG) funds available for the rehabilitation of units occupied by low and moderate income households, has been executed between Allendale and the Bergen County Office of Community Development. The county has sufficient funding to rehabilitate at least four units during the Borough's third round period of certification.

**Proposed Rehabilitation Program(s)**

<b>Rehabilitation Program</b>	<b>4 Units</b>
Bergen County Home Improvement Program	4
<b>TOTAL</b>	<b>4</b>

**B. Plan to Address Prior Round Obligation**

**Prior Round Obligation Credits**

Allendale is addressing a portion of the prior round obligation with 72 post-1986 credits and bonuses. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11. These 72 credits include 44 RCA units, 15 age-restricted rental units, one age-restricted rental bonus and 12 family ownership units in inclusionary developments that were all part of the Borough's prior round certified plan.

**Post-1986 Credits**

<b>Project/Development Name</b>	<b>Year Built or Approved</b>	<b>Type of Affordable Unit</b>	<b>Units/Bedrooms</b>	<b>Bonus Type</b>	<b>Bonuses</b>	<b>Total Units/Bedrooms + Bonuses</b>
Allendale Senior Housing	1997	Age-Restricted Rental	15	Age-Restricted Rental	1	16

Allendale Brook Estates	2002	Family Ownership	9	-	-	9
Saddle Dale	1999	Family Ownership	3	-	-	3
Jersey City RCA I	1993	RCA	32	-	-	32
Jersey City RCA II	1995	RCA	8	-	-	8
Ridgefield RCA	2003	RCA	4	-	-	4
<b>TOTALS</b>			<b>71</b>		<b>1</b>	<b>72</b>

### **Proposed Affordable Housing Mechanisms**

Allendale proposes to address the remaining 65-unit prior round obligation through the following mechanisms:

#### ***Orchard Commons***

Allendale will work with the non-profit Allendale Housing Inc. to address 10 units of its prior round obligation in this supportive shared living development that will consist of ten bedrooms within six total units. The development will not be age-restricted and will therefore also be eligible for 10 prior round rental bonuses. The proposed project is located on Block 1806; Lot 10.01 and consists of just under one-half acre at the corner of Orchard Street and Franklin Turnpike. This site is a portion of the “Site H” that was included in the Borough’s previously certified plan. Rather than develop the site with 30 total units including six affordable as was previously proposed, Allendale has acquired the site to be partially preserved as open space and partially developed with affordable housing. Allendale Housing Inc. has received a funding commitment from the New Jersey Housing and Mortgage Finance Agency (HMFA) allocating \$2,174,336 from the Agency’s Special Needs Housing Trust fund. The total cost of the project is \$2,774,336 with the balance of funding coming from the following: Bergen County HOME - \$300,000; Borough of Allendale - \$250,000; and FHLBNY - \$50,000.

The site has infrastructure available and is located in Planning Area 1 in the SDRP. A GIS analysis conducted by COAH staff does not reveal any environmental impediments to development of the site as proposed.

***Garden Homes/The Whitney***

The 21-acre Garden Homes property, designated as Block 2101, Lots 1, 2, 3, 5, 6, 7 and 8 and referenced by the Borough as site B2 is currently zoned ML-3 which provides an eight-unit per acre density with a 20 percent affordable set-aside. As a result of second round mediation, this site was re-zoned as ML-6 permitting a maximum of 150 total units with a 15 percent affordable set-aside that could produce up to 23 affordable units. The Borough's certified second round plan indicated that the site would minimally produce 12 family rental units on site and that all affordable units constructed on site or created via an RCA would be rental units.

This RCA was not finalized and, as of July 17, 2008, amendments to the Fair Housing Act now preclude the use of RCAs as an affordable housing delivery mechanism if such an agreement was not formally approved by COAH prior to enactment of the new legislation. In response, Allendale initially indicated that all 23 units would be built on site as family rental units that would also be eligible for rental bonuses.

In response to the Borough's petition, an objection was received from Allendale Whitney, LLC/Garden Homes. The objection was resolved in COAH mediation ( see attached Mediation Report) resulting in an agreement that the site would remain as certified in the Borough's second round plan with 12 family rental units on site and a payment in lieu of constructing the additional 11 units. The payment in lieu amount was revised from \$45,000 per unit to \$99,545 per unit to result in a \$1,095,000 payment that will be used to expand the scope of operations on a municipally sponsored, 100 percent affordable development included in the Borough's third round petition. This site, known as the Foreit site, will include 11 additional rental units as discussed in further detail below.

The Garden Homes site has infrastructure available and is located in Planning Area 1 in the SDRP. A GIS analysis conducted by COAH staff does not reveal any environmental impediments to development of the site as proposed.

***Former Farm (Site I)***

Allendale's previously certified plan included eight affordable housing units to be developed as part of inclusionary zoning on a property designated as Block 506, Lot 4 and referenced in the Borough's plan as Site I. The site was zoned to produce 40 total units

including eight affordable units as part of Allendale's 1991 judgment of compliance. However, the Borough's third round plan now indicates that the owner of the property intends to pursue a smaller development of only eight single family detached homes and would therefore provide either two affordable units on site or make a payment in lieu of constructing two affordable units. If the developer of the site chooses to make a payment in lieu of constructing affordable units, Allendale must provide COAH with detailed information on how and where the units will be created which may necessitate a future amendment to the Borough's plan.

The site has access to sewer and water infrastructure with sufficient capacity and is suitable for development as an affordable housing site. A GIS analysis conducted by COAH staff does not reveal any environmental impediments to development of the site as proposed. The site is being included in the Borough's plan as a two-unit inclusionary development.

#### ***Foreit Site***

As a result of mediation, Allendale agreed to retain the second round provisions allowing a payment in lieu of constructing 11 affordable units on the Garden Homes/Whitney site. The developer of this site had previously paid \$495,000 in lieu of constructing 11 rental units and agreed to provide an additional \$600,000 as a result of COAH mediation. Combined, this \$1,095,000 in contributions will be used to expand the scope of operation on the Foreit site also discussed as a site addressing growth share in the next section of this report. While the Foreit site was originally proposed to include 19 affordable units that would address Allendale's growth share obligation, additional funding from the mediated agreement will allow an additional 11 non-age-restricted rental units to be provided. An opportunity to acquire an adjoining property to aid in this expansion has also presented itself and will be pursued by the Borough in conjunction with the Bergen United Way.

The site is located in SDRP Planning Area 1 with access to public sewer and water facilities. While a GIS analysis conducted by COAH staff does not reveal any environmental constraints that would impede development as proposed, the nature of the existing business on the property proximity to the adjacent rail line prompted COAH staff to request additional information on the suitability of the site in a report dated May 19, 2009. The Borough has completed both a Phase I and Phase II Environmental Site Assessment to establish site

conditions. The results of these assessments indicate that there are no environmental or contamination issues that would significantly impede development of the site. While isolated instances of Chlordane were identified along the northern property adjacent to the railroad tracks, an August 17, 2009 Remedial Investigation report prepared by EcolSciences, Inc. of Rockaway, New Jersey indicates that remediation to DEP residential standards can be accomplished with minor excavation.

Allendale has discussed financing the development of the site with HMFA and HMFA officials, following a site visit, expressed interest in funding the Borough's proposal. Additionally, Allendale has adopted a resolution of intent to bond in the event HMFA and other financing does not materialize.

In its response to COAH's May 19, 2009 report, Allendale provided a copy of its option to purchase the property. Additionally, by resolution of the governing body dated July 23, 2009, the Borough formally exercised its option.

As the site moves closer to completion, Allendale must designate an administrative agent to manage the site and establish a procedures manual for income qualification and placement.

### ***Deleted Sites***

In Allendale's February 25, 1991 First Round Judgment of Compliance, the court included two sites that were subsequently carried forward by COAH during the grant of second round certification on October 1, 2003. The lack of development activity on the Board of Education Site (Block 1102; Lot 14) and the Episcopal Church Site(Block 1064; Lot 15) has prompted the Borough to reconsider the realistic opportunity for these sites to produce affordable housing. Consequently, Allendale deleted both sites from its plan. Neither property owner has objected to this deletion.

### **Proposed Prior Round Affordable Housing Mechanisms**

<b>Type/Name of Affordable Housing Mechanism</b>	<b>Type of Affordable Unit</b>	<b>Units/Bedrooms</b>	<b>Bonus Type</b>	<b>Bonuses</b>	<b>Total Units/Bedrooms + Bonuses</b>
Orchard Commons	Supportive Housing	10	Rental	10	20

Garden Homes	Family Rental	12	Rental	12	24
Former Farm*	Unknown	2	-	-	2
Foreit Site	Supportive/Family Rental	11	Rental	11	22
<b>TOTALS</b>		<b>35</b>		<b>33</b>	<b>68</b>

\* If the developer of this site chooses to make a payment in lieu of constructing affordable units, Allendale must provide COAH with detailed information on how and where the units will be created. This may require an amendment to the Borough's plan.

### **Prior Round Obligation Parameters**

Allendale proposes to comply with the applicable Prior Round parameters as follows:

#### **Prior Round Rental Obligation:<sup>3</sup> 35 Units**

<b>Development/Project Name</b>	<b>Type of Affordable Unit</b>	<b>Units</b>
Allendale Senior Housing	Age-restricted	15
Orchard Commons	Supportive Housing	10
Garden Homes	Family	12
Foreit Site	Supportive/Family	11
<b>TOTAL</b>		<b>48</b>

#### **Prior Round Age-Restricted Maximum<sup>4</sup> : 24 Units**

<b>Development/Project Name</b>	<b>Type of Affordable Unit</b>	<b>Units</b>
Allendale Senior Housing	Rental	15
<b>TOTAL</b>		<b>15</b>

<sup>3</sup> Rental Obligation: 25 percent (Prior Round Obligation – Prior Cycle Credits – Impact of 20 percent cap – Impact of the 1,000-unit limitation) =  $0.25 \times (137 - 0 - 0 - 0) = 34.25 = 35$

<sup>4</sup> Age-Restricted Maximum: 25 percent (Prior Round Obligation + Rehabilitation Share - Prior Cycle Credits – Rehabilitation Credits - Impact of 20 percent cap – Impact of the 1,000-unit limitation - Transferred or Proposed RCA Units Addressing the Prior Round Obligation) =  $0.25 \times (137 + 4 - 0 - 0 - 0 - 44) = 0.25 \times (141 - 44) = 24.25 = 24$

**Regional Contribution Agreement (RCA) Maximum<sup>5</sup>: 70 Units**

Receiving Municipality(s)	Type of Affordable Unit	Units
Jersey City I	General	32
Jersey City II	General	8
Ridgefield	General	4
<b>TOTAL</b>		<b>44</b>

**Prior Round Rental Bonus Maximum<sup>6</sup> : 35 Units**

Development/Project Name	Type of Bonus	Bonuses
Garden Homes/Whitney	Family	12
Orchard Commons	Supportive Housing	10
Allendale Senior Housing	Age-Restricted	1
Foreit Site	Family/Supportive	11
<b>TOTAL</b>		<b>34</b>

**C. Plan to Address Projected Growth Share**

**Growth Share Obligation Credits**

Allendale's Housing Element and Fair Share Plan does not include any growth share obligation credits.

**Proposed Affordable Housing Mechanisms**

Allendale proposes to address its projected 20-unit growth share obligation through the following mechanisms:

<sup>5</sup> RCA Maximum: 50 percent (Prior Round Obligation + Rehabilitation Share – Prior Cycle Credits – Rehabilitation Credits – Impact of 20 percent cap – Impact of the 1,000-unit limitation) =  $0.50 \times (137 + 4 - 0 - 0 - 0 - 0) = 0.5 \times (141) = 70.5 = 70$

<sup>6</sup> No rental bonuses shall be granted for rental units in excess of the prior round rental obligation, therefore, prior round rental bonus maximum = prior round rental obligation N.J.A.C. 5:97-3.5

### ***Allendale Senior Housing***

Allendale will expand its current 15-unit age-restricted rental development by adding a 16<sup>th</sup> unit through the conversion of existing common space within the development to address one unit of its projected growth share obligation. This unit will be administered along with the existing 15 units in full compliance with COAH regulations. The development has 99-year affordability controls that were put in place in 1997. Allendale indicates that eight of the existing 15 units are priced to be affordable to low-income age-restricted households and seven are priced to be affordable to moderate income age-restricted households. The Borough has further indicated that the 16<sup>th</sup> unit will be a moderate-income unit, thus balancing the units at half low-income and half moderate-income.

### ***Foreit Site***

Allendale has proposed a municipally sponsored 100 percent affordable development on a site consisting of approximately two acres located between West Crescent Avenue and Delta Court to address the remaining 19 units of its projected growth share obligation. Located at Block 904; Lots 10, 11, 12, 13 and 31, this site currently houses the business operations of a Paving & Excavating Contractor, and is located adjacent to an active commuter rail line. The site adjoins an existing single-family residential development and is directly across the railroad tracks from a multi-family residential development. Allendale proposes to develop the site with a variety of housing types that will include at least five and up to 10 supportive shared housing units, up to four age-restricted rental units, seven owner-occupied family units and at least three family rental units. Additionally, as a result of mediation, Allendale will receive payment in lieu of construction funding from the developer of the Whitney/Garden Homes development. These funds will be used to expand the scope of operations on the Foreit site to include 11 additional rental units that will be applied against the Borough's prior round obligation.

The site is located in SDRP Planning Area 1 with access to public sewer and water facilities. While a GIS analysis conducted by COAH staff does not reveal any environmental constraints that would impede development as proposed, the nature of the existing business on the property proximity to the adjacent rail line prompted COAH staff to request additional information on the suitability of the site in a report dated May 19, 2009. The Borough has

completed both a Phase I and Phase II Environmental Site Assessment to establish site conditions. The results of these assessments indicate that there are no environmental or contamination issues that would significantly impede development of the site. While isolated instances of Chlordane were identified along the northern property adjacent to the railroad tracks, an August 17, 2009 Remedial Investigation report prepared by EcolSciences, Inc. of Rockaway, New Jersey indicates that remediation to DEP residential standards can be accomplished with minor excavation.

Allendale has discussed financing the development of the site with HMFA and HMFA officials, following a site visit, expressed interest in funding the Borough's proposal. Additionally, Allendale has adopted a resolution of intent to bond in the event HMFA and other financing does not materialize.

In its response to COAH's May 19, 2009 report, Allendale provided a copy of its option to purchase the property. Additionally, by resolution of the governing body dated July 23, 2009, the Borough formally exercised its option.

As the site moves closer to completion, Allendale must designate an administrative agent to manage the site and establish a procedures manual for income qualification and placement.

#### **Proposed Growth Share Affordable Housing Mechanisms**

<b>Type/Name of Affordable Housing Mechanism</b>	<b>Type of Affordable Unit</b>	<b>Units/Bedrooms</b>	<b>Bonus Type</b>	<b>Bonuses</b>	<b>Total Units/Bedrooms + Bonuses</b>
Allendale Senior Housing Expansion	Age-restricted Rental	1	-	0	1
Foreit Property	Supportive Shared Housing Bedrooms	5	-	0	5
Foreit Property	Age-restricted Rental	4	-	0	4
Foreit Property	Family Sale	7	-	0	7
Foreit Property	Family Rental	3	-	0	3
<b>TOTALS</b>		<b>20</b>		<b>0</b>	<b>20</b>

### **Growth Share Parameters**

Allendale has satisfied the applicable Growth Share parameters as follows:

#### **Growth Share Rental Obligation:<sup>7</sup> 5 Units**

<b>Development/Project Name</b>	<b>Type of Affordable Unit</b>	<b>Units</b>
Allendale Senior Housing Expansion	Age-restricted	1
Foreit Property	Supportive Shared Housing Bedrooms	5
Foreit Property	Age-restricted	4
Foreit Property	Family	3
<b>TOTAL</b>		<b>13</b>

#### **Growth Share Family Rental Requirement<sup>8</sup> : 3 Units**

<b>Development/Project Name</b>	<b>Type of Affordable Unit</b>	<b>Units</b>
Foreit Property	Family Rental	3
<b>TOTAL</b>		<b>3</b>

#### **Growth Share Minimum Family Requirement<sup>9</sup> : 10 Units**

<b>Development/Project Name</b>	<b>Type of Affordable Unit</b>	<b>Units</b>
Foreit Property	Family Rental	3
Foreit Property	Family Sales	7
<b>TOTAL</b>		<b>10</b>

<sup>7</sup> Projected Growth Share Rental Obligation:  $0.25(\text{Projected Growth Share})$  or  $0.25(20)= 5$  units N.J.A.C. 5:97-3.10(b)3

<sup>8</sup> Projected Growth Share Family Rental Requirement:  $0.5(\text{Projected Growth Share Rental Requirement})$  or  $0.5(5)= 3$  units N.J.A.C. 5:97-3.4(b)

<sup>9</sup> Projected Growth Share Family Requirement:  $0.5(\text{Units Addressing the Growth Share Obligation})$  or  $0.5(20)= 10$  units N.J.A.C. 5:97-3.9

**Very Low Income Minimum Requirement<sup>10</sup> : 3 Units**

Development/Project Name	Type of Affordable Unit	Units
Foreit Property	Supportive Shared Housing Bedrooms	1
Foreit Property	Family Rental	2
<b>TOTAL</b>		<b>3</b>

**Age-Restricted Maximum<sup>11</sup> : 5 Units**

Development/Project Name	Type of Affordable Unit	Units
Foreit Property	Rental	4
Allendale Senior Housing Expansion	Age-restricted	1
<b>TOTAL</b>		<b>5</b>

**Bonus Maximum<sup>12</sup>: 5 Bonuses**

Development/Project Name	Type of Bonus	Bonuses
None Requested	-	0
<b>TOTAL</b>		<b>0</b>

**Actual Growth Share Obligation**

The actual growth share obligation will be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed or expanded non-residential developments in accordance with Appendix D of N.J.A.C. 5:97. At plan evaluation review pursuant to N.J.A.C. 5:96-10, COAH will compare the actual growth share obligation with the actual number of affordable units constructed.

The New Jersey Department of Community Affairs (NJ DCA) *Construction Reporter*

<sup>10</sup> Growth Share Very Low Income Requirement:  $.13(\text{Projected Growth Share Obligation})$  or  $.13(20) = 3$  units pursuant to P.L.2008, c.46

<sup>11</sup> Projected Growth Share Age Restricted Maximum:  $.25(\text{Projected Growth Share})$  or  $.25(20) = 5$  units N.J.A.C. 5:97-3.10(c)2

<sup>12</sup> Projected Bonus Maximum:  $.25(\text{Projected Growth Share})$  or  $.25(20) = 5$  units N.J.A.C. 5:97-3.20

indicates that between January 1, 2004 and September 2008, Allendale has issued certificates of occupancy for two housing units and also for the non-residential square footage equivalent of 36 jobs, yielding an actual growth share obligation through September 30, 2008, of three affordable units.<sup>13</sup>

**D. Summary of Plan to Address Fair Share Obligation**

**REHABILITATION SHARE SUMMARY**

**Rehabilitation Share: 4 Units**

<b>Program Name</b>	<b>Units</b>
Bergen County Home Improvement Program	4
<b>TOTAL</b>	<b>4</b>

**PRIOR ROUND SUMMARY**

**Prior Round Obligation: 137 Units**

	<b>Name of Mechanism</b>	<b>Units/Bedrooms</b>	<b>Bonus Type</b>	<b>Bonuses</b>	<b>Total Units/Bedrooms + Bonuses</b>
<b>Post-1986 Credits</b>	Age-Restricted Rentals	15	Rental	1	16
	Inclusionary Zoning	12	-	0	12
	RCA	44	-	0	44
<b>Subtotal</b>		<b>71</b>		<b>1</b>	<b>72</b>
<b>Proposed Mechanisms</b>	Municipally Sponsored 100%	21	Rental	21	42
	Inclusionary Zoning	14	Rental	12	26
<b>Subtotal</b>		<b>35</b>		<b>33</b>	<b>68</b>
<b>TOTAL</b>					<b>140</b>
<b>Surplus/(Deficit)</b>					<b>3</b>

<sup>13</sup> The number of residential COs (2) is initially divided by 5 to yield 0.4 units and the number of jobs (36) is initially divided by 16 to yield 2.25 units. Allendale's total actual growth share is therefore 3 units (0.4 + 2.25). **Note:** This number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.5; therefore, the actual growth share may vary.

**GROWTH SHARE SUMMARY**  
**Projected Growth Share Obligation: 20 Units**

	<b>Name of Mechanism</b>	<b>Units/Bedrooms</b>	<b>Bonus Type</b>	<b>Bonuses</b>	<b>Total Units/Bedrooms + Bonuses</b>
<b>Proposed Mechanisms</b>	Municipal Supportive Housing	5	-	0	5
	Municipal Family Rentals	3	-	0	3
	Municipal Family Rentals	7	-	0	7
	Municipal Age-Restricted Rental	5	-	0	5
<b>Subtotal</b>		<b>20</b>		<b>0</b>	<b>20</b>
<b>TOTAL</b>					<b>20</b>
<b>Surplus/(Deficit)</b>					<b>0</b>

### **III. SUMMARY OF MEDIATION**

#### **A. Objections**

COAH received two objections to Allendale's Third Round Plan. David Oberlander, Esq., of Flaster Greenberg submitted an objection prepared by David Kinsey on behalf of Allendale Whitney, LLC and Thomas Monahan, Jr., Esq.. of Dennis A. Maycher, PC submitted an objection on behalf of Calm Development, LLC. Objections and the municipal response from Allendale were summarized in COAH's May 19, 2009 Pre-Mediation Report Requesting Additional Information.

#### **B. Mediation**

Mediation between the Borough and Calm Development took place in Trenton on June 4, 2009. The mediation session did not result in an agreement between the parties.

Mediation between the Borough and Allendale/Whitney took place in Trenton on June 23, 2009. Negotiations continued resulting in a mediated agreement between the parties.

Mediation concluded on September 3, 2009. The complete Mediation Report, dated

September 4, 2009, is attached hereto as Appendix B. The mediated agreement is an attachment to the Mediation Report.

#### **IV. FAIR SHARE DOCUMENT REVIEW**

##### **A. Development Fee Ordinance**

Allendale's plan includes a development fee ordinance that was originally approved by COAH on December 12, 1992, and adopted by the Borough on February 25, 1993. The ordinance has since been amended and COAH granted Allendale approval of the most recent amendment on December 30, 2008, which was adopted by the Borough on March 12, 2009.

##### **B. Third Round Spending Plan**

Allendale's prior round spending plan was approved by COAH on March 13, 1994. A revised third round spending plan was submitted with the Borough's third round petition for COAH's review and approval. Revisions were subsequently made by Allendale to reflect additional revenues and expenditures that resulted from mediation. The spending plan is reviewed by COAH in a separate report.

##### **C. Affordable Housing Ordinance/Affordable Housing Administration**

As part of its second round certification, Allendale adopted an affordable housing ordinance that comports with the requirements of the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et seq., which was amended on December 20, 2004. The ordinance has been amended to comply with the barrier free subcode of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and the accessibility requirements of N.J.S.A. 52:27D-123.15.

An ordinance establishing the position of a municipal housing liaison was adopted by Allendale on July 27, 2006 and a resolution appointing a municipal housing liaison was adopted by the Borough on September 19, 2006.

Allendale is responsible for the continued re-sale and re-rental of existing affordable units and the initial sale and rental of newly constructed affordable units within the Borough. The Borough's Allendale Senior Housing, Corp. has been successfully administering the Allendale

Senior Housing units since the project was completed in 1997. Allendale Housing, Inc will administer the newly created units at Orchard Commons and the Foreit site. The Housing Affordability Service (HAS) is the administrative entity for the remainder of the affordable units in the Borough's plan.

#### **D. Affirmative Marketing Plan**

Allendale has an approved affirmative marketing plan that comports with the requirements of the UHAC and ensures the units in the Borough's 1987-2018 Fair Share Plan and all future affordable housing units will be affirmatively marketed to the region upon initial sale/rental and re-sale/re-rental.

### **V. MONITORING**

Allendale must comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the municipality's actual growth pursuant to N.J.A.C. 5:97-2.5. As indicated above, credits for built units will be validated and verified by COAH staff during monitoring prior to the first biennial plan evaluation. It should be noted that credits for affordable housing programs and/or affordable units must be in compliance with N.J.A.C. 5:97-4. If the units are determined not to be eligible for credit, COAH will notify Allendale in writing and the Borough may be directed to amend its certified plan to address the shortfall.

Pursuant to N.J.A.C. 5:96-10.1, COAH will conduct biennial plan evaluations upon substantive certification of Allendale's Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing. If upon any biennial review the difference between the number of affordable units constructed or provided in the Borough and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a prorated production shortage of 10 percent or greater or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the municipality to amend its plan to address the shortfall.

## **VI. RECOMMENDATION**

Subsequent to mediation, the COAH Mediator has determined that no contested issues of material fact remain. Mediation has been concluded and summarized in a report dated September 4, 2009 which is attached hereto as Appendix B. COAH staff recommends that mediation report be accepted and that Allendale be granted third round substantive certification. Allendale must adopt all necessary implementing ordinances within 45 days of the grant of substantive certification and submit certified copies of the adopted ordinances to COAH within seven days of the adoption.

## **Appendix A**

**Workbook A: Growth Share Determination Using Published Data**  
(Using Appendix F(2), *Allocating Growth To Municipalities*)

**COAH Growth Projections**  
**Must be used in all submissions**

**Municipality Name:**

**Allendale Borough**

Enter the COAH generated growth projections from Appendix F(2) found at the back of N.J.A.C. 5:97-1 et seq. on Line 1 of this worksheet. Use the Tab at the bottom of this page to toggle to the exclusions portion of this worksheet. After entering all relevant exclusions, toggle back to this page to view the growth share obligation that has been calculated. Use these figures in the Application for Substantive Certification.

	Residential	Non-Residential
1 <b>Enter Growth Projections From Appendix F(2) *</b>	268	-341
2 <b>Subtract the following Residential Exclusions pursuant to 5:97-2.4(a) from "Exclusions" tab</b>	<a href="#">Click Here to enter Prior Round Exclusions</a>	
COs for prior round affordable units built or projected to be built post 1/1/04	25	
Inclusionary Development	6	
Supportive/Special Needs Housing	0	
Accessory Apartments	0	
Municipally Sponsored or 100% Affordable	0	
Assisted Living	0	
Other	0	
Market Units in Prior Round Inclusionary development built post 1/1/04	135	
3 <b>Subtract the following Non-Residential Exclusions (5:97-2.4(b))</b>		
Affordable units	0	
Associated Jobs		0
4 <b>Net Growth Projection</b>	102	-341
5 <b>Projected Growth Share</b> (Conversion to Affordable Units Dividing Households by 5 and Jobs by 16)	20.40 Affordable Units	0.00 Affordable Units
6 <b>Total Projected Growth Share Obligation</b>		20 Affordable Units

\* For residential growth, see Appendix F(2), Figure A.1, Housing Units by Municipality. For non-residential growth, see Appendix F(2), Figure A.2, Employment by Municipality.

## Affordable and Market-Rate Units Excluded from Growth

**Municipality Name: Allendale Borough**

**Prior Round Affordable Units NOT included in Inclusionary Developments Built post 1/1/04**

Development Type	Number of COs Issued and/or Projected
Supportive/Special Needs Housing	6
Accessory Apartments	
Municipally Sponsored and 100% Affordable	
Assisted Living	
Other	
<b>Total</b>	<b>6</b>

### Market and Affordable Units in Prior Round Inclusionary Development

Built post 1/1/04

N.J.A.C. 5:97-2.4(a)

(Enter Y for yes in Rental column if rental units resulted from N.J.A.C. 5:93-5.15(c)5 incentives)

Development Name	Rentals? (Y/N)	Total Units	Market Units	Affordable Units	Market Units Excluded
Garden Homes	Y	150	127	23	127
Former Farm	N	10	8	2	8
		0			0
		0			0
		0			0
<b>Total</b>		<b>160</b>	<b>135</b>	<b>25</b>	<b>135</b>

### Jobs and Affordable Units Built as a result of post 1/1/04 Non-Residential Development

N.J.A.C. 5:97-2.4(b)

Development Name	Affordable Units Provided	Permitted Jobs Exclusion
		0
		0
		0
		0
<b>Total</b>	<b>0</b>	<b>0</b>

[Return To Workbook A Summary](#)

## **Appendix B**

**MEDIATION REPORT**  
**Borough of Allendale/Bergen County**

by  
William P. Malloy  
COAH Mediator  
September 4, 2009

The Borough of Allendale (“the Borough” or “Allendale”) petitioned the Council on Affordable Housing (“COAH” or “the Council”) for substantive certification of its third round housing element and fair share plan.

There were two objectors to the plan: Calm Development, LLC and Allendale Whitney, LLC. The mediation of these objections began on June 4, 2009 in a mediation session attended by representatives of the municipality and Calm Development. Attending for the Borough were: Vincent Barra, Mayor of Allendale; Liz White, Member of the Borough Council; Mary Beth Lonergan, PP, AICP, Allendale’s Planner; and David Bole, Esq. Attending for Calm Development were Michael A. D’Antonio and Thomas P. Monahan, Esq. This mediation session did not result in an agreement between the parties.

A second mediation session was held on June 24, 2009 to address the objections of Allendale Whitney. Attending for Allendale Whitney were Scott T. Loventhal and David Oberlander, Esq. The Borough’s representatives were the same as those in the first mediation session. At the close of this session, the parties indicated that they wished to continue discussions. Additional mediation sessions were scheduled for July 14 and August 20; however, neither session was necessary because the Borough and Allendale Whitney stated that they were continuing their negotiations. These negotiations resulted in a mediation agreement between the parties. Mediation ended on September 3, 2009.

**Background**

Allendale has a prior round fair share obligation of 137 units and a net projected growth share obligation of 20 units of affordable housing. According to the Council’s Pre-Mediation Report of May 19, 2009, Allendale’s Fair Share Plan to address its prior round obligation includes 72 units of prior round obligation credits, 10 units of supportive shared living units at Orchard Commons, 2 units at Former Farm (site 1) and 23 units in the Garden Homes/Allendale

Whitney development. The Garden Home site was the subject of a second round COAH mediation agreement permitting a maximum of 150 total housing units, with a 15 % affordable set-aside which could produce up to 23 affordable units. The Borough's certified second round plan indicated that the site would produce a minimum of 12 family rental units and that an RCA was contemplated, financed by an in lieu payment representing the remaining units. Because RCA's are now precluded, under the Fair Housing Act Amendments of July 17, 2008, Allendale indicated in its third round fair share plan that all 23 units would be built on site as family rental units.

In its fair share plan, Allendale proposed to address its projected 20-unit growth share obligation through a one-unit expansion of its current 15-unit age restricted Allendale senior housing rental development. The remaining units would be placed on the Foreit site in a municipally sponsored 100 percent affordable development, with a variety of housing types, including supportive shared housing units, age-restricted rental units, owner-occupied family units and family rental units.

In its May 19 Pre-Mediation Report, COAH requested additional information, including documentation indicating that the developer of the Garden Homes/Whitney site would agree to provide all 23 affordable units on site and a demonstration that the Foreit site was suitable for affordable housing. Further, COAH required Allendale to submit an actual contract or option to purchase the Foreit property, a pro-forma statement for the proposed development of the site and a resolution of intent to bond in the event of a funding short-fall. It is the understanding of this mediator that as of the date of this mediation report, Allendale has presented to COAH its response to COAH's pre-mediation report.

## **Objections**

### **Calm Development, LLC:**

Calm Development, the owner of premises located at 316 East Allendale Avenue in the Borough, filed objections to the Borough's Housing Element and Fair Share Plan on February 27, 2009. Its primary objection is the fact that its site was not included as a site for affordable housing in Allendale's Fair Share Plan. The attorney for Calm Development stated that it had made repeated attempts to urge the Borough to zone its site for an inclusionary development, but that the Borough had failed to do so. Its other objections include a contention that the Foreit site

is “basically undevelopable or will require an extensive financial outlay and time if in fact it can be developed.” Calm Development contends that this site is contaminated because an asphalt business was conducted on it for thirty years. In addition, Calm Development states that the site is adjacent to a railroad track, making it unsuitable for affordable housing. Further, it is Calm Development’s position that the Borough’s Fair Share Plan reduces the amount of affordable housing required; that Allendale’s Third Round obligation should be more than twenty units; that the Episcopal Church site should not be included in the Plan because the owner refuses to develop it for affordable housing; and that development of the Orchard Commons site is too expensive.

Allendale responded to these objections by letter, dated May 11, 2009, written by Lonergan. In that letter, Lonergan states that the Borough chose not to include the Calm Development property in its Fair Share Plan because wetlands on the site restricted development to the extent that inclusionary zoning on it would possibly only generate six or seven units, less than the nineteen affordable units planned for the Foreit site. With regard to the Foreit site, Lonergan points out that the objector did not provide any reports with regard to alleged environmental constraints on the site. She stated that the Phase I Environmental Site Assessment of the site had been submitted to COAH and that a Phase II report was being completed and would be submitted. With regard to the site’s proximity to the railroad tracks, she stated that an existing residential neighborhood was located directly across the tracks from the site. With regard to the Orchard Commons site, she noted that the HMFA was scheduled to approve a funding commitment for the development and that closing on the site would take place forty-five days after the approval. As to the Episcopal Church site, Lonergan stated that Allendale proposed to eliminate the inclusionary zoning on the site.

#### Allendale Whitney, LLC

Allendale Whitney, which owns and is developing a 150-unit inclusionary development known as “The Whitney at Allendale” filed objections to the Borough’s Housing Element and Fair Share Plan on February 10, 2009. Its major objection was that the Borough included 23 affordable family rental units on its site. Allendale Whitney pointed out that pursuant to a 2002 Mediation Agreement between it and the Borough, 12 family rental units were to be built on its site, and a contribution to the Borough’s Housing Trust Fund was to be paid in lieu of

construction of 11 units. To that end, in 2006 Allendale Whitney paid to the Borough an in lieu payment of \$495,000, which was deposited in its Housing Trust Fund. Allendale Whitney's other objection concerned the Foreit property. It contends that the property did not create a realistic opportunity for affordable housing because the Borough did not provide a pro forma for the project; that there was no resolution of intent to bond for a projected shortfall; and that the Borough provided no evidence of control over the property other than a memo from the Mayor indicating that there was an option agreement with the property owner.

### **Mediation**

Mediation between the Borough and Calm Development took place in Trenton on June 4, 2009. Calm Development urged the Borough to include its site in the Borough's Fair Share Plan, referring to its belief that its site was more appropriate for inclusionary zoning than the Foreit property. It was made clear to this Mediator by both parties to the mediation that Calm Development and the Borough have a long history regarding the zoning of Calm Development's site and other municipal issues. The Borough vigorously defended its selection of the Foreit property as a site for a municipally-sponsored 100 percent affordable housing development. The Borough stated that it would be submitting material to COAH in response to the pre-mediation report regarding the Phase II Environmental Assessment and that it was confident that the site presented no major environmental barriers to residential development. Further, the Borough stated that residential development of the site was compatible with contiguous residential development across the railroad tracks. It was clear after discussion that the Borough was not willing to zone the Calm Development site as an inclusionary development for affordable housing, as requested by Calm Development. After meeting privately with each of the parties, it became clear to the mediator that there was no basis for an agreement between them. The mediator therefore concluded the mediation without resolving Calm Development's objections.

Mediation between the Borough and Allendale/Whitney took place in Trenton on June 23, 2009. The parties worked to resolve their differences without the mediator present. After about an hour, the parties stated that they wanted to continue discussions and requested another mediation session, which was scheduled for July 14. As that date approached, both parties contacted the mediator to report that negotiations were going well but were not completed. They requested postponing our next session to a later date. August 20 was set as the next mediation

date. Prior to the August 20 mediation, the mediator was informed that the parties were close to achieving a mediation agreement but that more time was needed, in part so that the Allendale governing body could review and approve the agreement. Because the governing body was going to meet on August 27, the parties asked that the mediation be extended until August 28. On August 31, the mediator was told the parties needed a few more days to iron out some details of the agreement. They did so and forwarded a copy of the agreement to the mediator on September 3. The mediated agreement is attached hereto.

In the mediation agreement, the Borough agrees to amend its Fair Share Plan to include 12 low and moderate rental units on the Allendale/Whitney site. Allendale/Whitney agrees to increase its in lieu payment for the 11 units that will be transferred off site. In addition to the \$495,000 in lieu payment already made, Allendale/Whitney agrees to pay an additional \$300,000 to the Borough by September 1, 2010 and subsequently another \$300,000. Payment of the second \$300,000 will be linked to the issuance of Certificates of Occupancy for the Market Rate Units. Allendale/Whitney will pay \$3,000 to the Borough upon the issuance of each of the first one hundred COs, with the total amount to be paid by June 30, 2012. This mediation agreement is to be effective upon COAH's grant of substantive certification to the Borough of Allendale's Fair Share Plan.

### **Mediation Outcome**

Allendale/Whitney's objections were resolved and a mediation agreement achieved with the Borough. This agreement will be incorporated into any Grant of Substantive Certification issued by the Council with regard to the Borough of Allendale's Housing Element and Fair Share Plan.

Calm Development's objections were not resolved during mediation and the Mediator did not believe that further mediation would result in a settlement between Calm Development and the Borough. The Borough is not willing to include Calm Development's site in its Fair Share Plan. Calm Development will not withdraw its objections, including its objections to the Foreit site. The Mediator has been informed that the Borough has recently submitted the information COAH requested in its pre-mediation report, including information concerning the Foreit site.

As noted in the Pre-Mediation report, COAH staff noted that the Foreit site is located in SDRP Planning Area 1 with access to public sewer and water facilities. While a GIS analysis

conducted by COAH staff did not reveal any environmental constraints that would impede development as proposed, the nature of the existing business on the property and proximity to the adjacent rail line prompted COAH staff to request additional information on the suitability of the site. In response, Allendale commissioned a Phase II Environmental Site Assessment to establish site conditions. The results of the assessment indicates that there are no environmental or contamination issues that would significantly impede development of the site. While isolated instances of Chlordane were identified along the northern property adjacent to the railroad tracks, an August 17, 2009 Remedial Investigation report prepared by EcolSciences, Inc. of Rockaway, New Jersey indicates that remediation to DEP residential standards can be accomplished with minor excavation.

Therefore, at this time, no material issue of contested fact arising out of this mediation requires a transfer to the Office of Administrative Law.

## MEDIATION AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the Borough of Allendale (the “**Borough**”), a municipal corporation of the State of New Jersey maintaining its principal office at 500 West Crescent Avenue, Allendale, New Jersey 07401 and Allendale Whitney, L.L.C., maintaining its principal office at 820 Morris Turnpike, Short Hills, New Jersey 07078 (the “**Developer**”).

### RECITALS

1. Developer is the owner of a 20.7 acre property in the Borough known as the Whitney and identified as Block 2101, Lots 1, 2, 3, 5, 6, 7 and 8 on the Borough Tax Maps (the “**Property**”). Developer is presently constructing a 150 unit inclusionary development on the property (the “**Project**”). The Project arises out of a prior Mediation Agreement entered into by the Borough and the Developer’s predecessor in connection with the Borough’s Second Round Compliance Plan.
2. On February 21, 1997, the Borough petitioned COAH for Substantive Certification of its Second Round Plan. On November 29, 1999, the Borough repetitioned for approval.
3. An objection to the Borough’s Second Round Petition was filed by Developer’s predecessor in title Sanford Freeman (“**Freeman**”).
4. The Freeman Objection was submitted by COAH to mediation. The parties subsequently resolved their dispute as reflected in a Mediation Agreement entered into on April 4, 2002 between Freeman and the Borough (the “**2002 Mediation Agreement**”).

5. The 2002 Mediation Agreement provided, *inter alia*, for construction of up to 150 units on the Property. An affordable set-aside of 15 percent was agreed upon, with the requirement that the affordable units be family rental units. At the time Developer filed for municipal land use approvals, Developer was to elect whether it would (a) construct all of the required affordable rental units on the site as part of the Project; or (b) construct 12 affordable rental units on site and fund a Regional Contribution Agreement for the remaining rental units.

6. The 2002 Mediation Agreement was subsequently accepted by COAH and the property was rezoned to permit the Project.

7. By Resolution adopted on August 25, 2005, the Borough Planning Board granted Freeman site plan approval for the Project. As elected by Freeman, the approval required that 12 affordable rental units be provided on site and that, in addition, Freeman would fund an 11 rental unit Regional Contribution Agreement (“RCA”).

8. In or about the month of January 2007, Freeman and the Borough entered into a Developer’s Agreement with regard to the Project (the “**Developer’s Agreement**”). In accordance with the site plan approval, the Developer’s Agreement required that the Developer set aside 12 of the housing units for affordable rental housing and, in addition, make a contribution to the Borough in an amount required to fund an 11 rental unit RCA, in accordance with COAH regulations applicable at the time of the payment.

9. In accordance with its obligation, by check dated October 13, 2006, Freeman paid to the Borough the sum of \$495,000 to fund an 11 rental unit RCA.

10. Subsequently, on July 7, 2008, Developer purchased the Property, and succeeded to all Freeman's rights to the Project.

11. By virtue of P.L. 2008 c.46 (commonly known as A-500), effective July 17, 2008, the Legislature abolished RCA's. As of that date, COAH had not approved the RCA which was to have been funded with Developer's contribution.

12. The Project is presently under construction. Site improvements began in August 2008, and the first building permit issued in May, 2009. The target completion schedule is 24 months.

13. On December 29, 2008, the Borough adopted a Third Round Housing Element and Fair Share Plan (the "**Plan**") and two days later, on December 31, 2008, submitted to COAH a Petition for Substantive Certification. The Plan claimed a total of 46 prior round credits for the Project, including credits for 23 family rental units and 23 rental bonuses. The Plan thus assumed that all 23 affordable units were to be built on site.

14. On or about February 11, 2009, Developer filed with COAH an objection to the Plan (the "**Objection**"). Developer's primary objection was to the Borough claiming credit for 23 on site affordable units, rather than 12 on site affordable units, as was provided in the site plan approval and the Developer's Agreement.

15. COAH issued a pre-mediation report on May 19, 2009. The matter was thereafter placed in mediation pursuant to COAH's procedural rules, with William Malloy, designated as the COAH mediator. An initial mediation session was held on June 23, 2009.

16. As a result of the mediation and subsequent discussions, the parties have now reached an agreement resolving the issues raised by the Objection. This Mediation Agreement is intended to incorporate that agreement.

NOW, THEREFORE, in consideration of these presents and other good and valuable consideration, and subject to approval by COAH, the Borough and Developer agree as follows:

### **SECTION I**

#### **INCORPORATION OF RECITALS**

All Recitals as set forth above are incorporated by reference herein as if set forth herein at length.

### **SECTION II**

#### **AMENDMENT TO PLAN**

The Borough shall amend the Plan to reflect that the Project will provide a total of twelve (rather than twenty-three) on site low and moderate rental housing units and an in-lieu affordable housing contribution for 11 off-site affordable rental housing units to be constructed by the Borough within the Borough.

### **SECTION III**

#### **DEVELOPER'S PAYMENT TO AFFORDABLE HOUSING TRUST FUND**

In lieu of providing the eleven additional affordable units on site, Developer shall make a payment to the Borough's Affordable Housing Trust Fund in the total amount of One Million Ninety-Five Thousand Dollars (\$1,095,000.00), to be payable as follows:

- a. The sum of Four Hundred Ninety Five Thousand Dollars (\$495,000.00) has previously been paid.
- b. The sum of Three Hundred Thousand Dollars (\$300,000.00) shall be paid on or before September 1, 2010.

- c. The sum of Three Hundred Thousand Dollars (\$300,000.00) shall be paid by payments of Three Thousand Dollars (\$3,000.00) upon the issuance of a Certificate of Occupancy for each of the first one hundred market rate units in the Project, subject to the requirement that any remaining outstanding balance of the Three Hundred Thousand Dollars (\$300,000.00) then due and owing shall be paid on or before June 30, 2012.

Developer's responsibility with respect to the eleven off-site affordable rental units shall be limited to making the payments set forth in this Agreement. The Borough shall construct the eleven off-site affordable rental units without any further contribution from Developer.

#### **SECTION IV**

#### **SECTION IV**

#### **THE CONSTRUCTION OF THE PROJECT**

The Developer may continue to proceed with construction of the Project in accordance with the existing site plan approval and Developer's Agreement.

#### **SECTION V**

#### **WITHDRAWAL OF OBJECTION**

The Developer agrees to withdraw its objection to the Plan and the Borough's Petition for Substantive Certification upon execution of this Mediation Agreement.

#### **SECTION VI**

#### **ENTIRE UNDERSTANDING**

This Mediation Agreement contains the entire understanding of the parties with respect to the issues referred to herein.

## **SECTION VII**

### **DEVELOPER'S DEFAULT**

In the event that the Developer fails to fulfill its obligations under this Mediation Agreement, the Borough shall provide the Developer with written notice and the opportunity to cure. If the Developer fails to cure default within thirty (30) days of receipt of said notice, Developer shall be considered to be in default (the "default") of this Agreement. In the event of default, the Borough shall be permitted to withhold the issuance of all building permits and certificates of occupancy and demand payment under the Developer's Agreement, performance and maintenance guarantees for the construction and/or maintenance of all site improvements.

## **SECTION VIII**

### **MUTUAL COOPERATION**

The Developer shall fully cooperate and assist the Borough with the Borough's efforts to obtain Substantive Certification from COAH. The Developer agrees to execute any documentation reasonably required by COAH or the Borough specifically confirming the Mediation Agreement set forth herein. The Borough agrees to cooperate with the Developer and COAH to facilitate the development of the Project.

## **SECTION IX**

### **SUCCESSORS AND ASSIGNS**

This Mediation Agreement shall be binding upon Developer and the Borough's respective designees, representatives, agents, successors and assigns. Any and all successors and assigns of the Property shall confirm to the Borough and COAH their/its commitment to honor the terms and conditions of this Mediation Agreement specifically including, but not limited to, all financial obligations required herein.

## **SECTION X**

### **NOTICES**

All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by the United States Certified Mail, Return Receipt Requested addressed to the appropriate party or successor in interest or sent via telefax with a copy to be sent via regular mail. Changes in notice recipient for either the Borough; the Developer or COAH shall be made in writing under the terms of this paragraph.

Notices for the Borough shall be sent to:

Borough Clerk, Borough of Allendale,  
Municipal Building  
500 West Crescent Avenue  
Allendale, New Jersey 07401  
Fax: (201) 825-1913

With copy to:

David B. Bole, Esq.  
Winne Dooley & Bole, PC  
Suite 301  
240 Frisch Court  
Paramus, NJ 07652  
Tel.: 201-368-8889  
Fax: 201-368-8883  
wdblawn@verizon.net

Notices for developer shall be sent to:

Allendale Whitney, L.L.C.  
820 Morris Turnpike  
Short Hills, NJ 07078  
Attention: Scott Leventhal  
Tel.: 973 467-5000 x212

With copy to:

David R. Oberlander, Esq.  
FLASTER/GREENBERG, PC  
1810 Chapel Avenue West  
Cherry Hill, NJ 08002  
Tel.: 856-661-2283  
Fax: 856-661-1919  
E-Mail: david.oberlander@flastergreenberg.com

Notices for COAH shall be sent to:

Executive Director  
New Jersey Council on Affordable Housing  
101 South Broad Street  
CN 813  
Trenton, N.J. 08625-0813

#### **SECTION XI**

#### **GOVERNING LAW**

This Mediation Agreement is the product and result of mediation before COAH and shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey and COAH's regulations as now exist or as may be subsequently amended.

#### **SECTION XII**

#### **COAH MONITORING AND REPORTING REQUIREMENTS**

Developer shall cooperate fully with the Borough and its designees in providing any information necessary to complete and/or satisfy all COAH monitoring, reporting requirements specified in N.J.A.C. 5:96-11.3 and 11.6 to assist the Borough in a timely filing of all required forms.

### **SECTION XIII**

#### **MODIFICATION**

Any modification of this Mediation Agreement shall be binding only if approved by COAH and evidenced in writing signed by both parties or an authorized representative of each party.

### **SECTION XIV**

#### **EXECUTION IN COUNTERPART**

This Agreement may be signed in one or more counterparts (or with counterpart signature pages) which, taken together, shall constitute a fully executed Agreement and shall be considered as a single document.

### **SECTION XV**

#### **COMPLIANCE WITH COAH REGULATIONS**

The Borough anticipates COAH approval of a total of twenty-four credits from the Project (twelve onsite low and moderate rental units and twelve rental bonuses). Accordingly, Developer shall construct and maintain the twelve onsite affordable rental units in conformance with all applicable COAH regulations.

### **SECTION XVI**

#### **DATE OF AGREEMENT**

The parties acknowledge and agree that this Agreement shall not be effective unless and until it is included by COAH in the grant of substantive certification to the Borough. This Agreement shall become null and void if COAH refuses to grant substantive certification to the Borough. In such event, the Borough shall be permitted to submit a revised and amended Housing Element and Fair Share Plan to COAH.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal on the dates provided below.

ATTEST:

BOROUGH OF ALLENDALE

\_\_\_\_\_, Borough Clerk

\_\_\_\_\_, Mayor

WITNESS:

ALLENDALE WHITNEY, L.L.C.

\_\_\_\_\_

\_\_\_\_\_  
Scott T. Loventhal, Member

[illegible]

Sworn to and subscribed  
Before me on the date aforesaid.

**Notary Public**

## **EXHIBIT B**

**COAH REPORT IN RESPONSE TO COMMENTS  
RECEIVED REGARDING COMPLIANCE REPORT  
ALLENDALE BOROUGH / BERGEN COUNTY  
REGION #1  
September 28, 2009**

During the 14-day comment period following the receipt of Allendale Borough's Compliance Report, comments were received from A. Michael Rubin, Esq. on behalf of his client, Calm Development, Inc. (Calm Development) The comments do not alter the Compliance Report.

Calm Development's Comments

On September 24, 2009, Calm Development submitted comments that focused on two issues: allegations that the environmental studies conducted by Allendale did not accurately reflect the condition of the Foreit Site; and allegations that the Borough's proposed Orchard Commons site is both restricted from development and is the subject of an over-appropriation of funding.

COAH's Response

Allendale submitted a Remedial Investigation Report prepared by EcolSciences, Inc. of Rockaway, New Jersey indicating that remediation to DEP residential standards can be accomplished and that there are no environmental or contamination issues that would significantly impede development of the site. The report was submitted prior to the conclusion of mediation and a copy of the report was made available to Calm Development. The Borough has provided a detailed report addressing the suitability of the Foreit site; however, the allegations by Calm Development are unsubstantiated.

Allendale has demonstrated that it has full ownership of the Orchard Commons site. The site has been acquired specifically as an affordable housing site. Additionally, the site has been designated as an affordable housing site in the Housing Element of the Borough's master plan which has been duly adopted by the Allendale Planning Board pursuant to N.J.S.A. 40:55D-28 and the site is included as an affordable housing site in the Fair Share Plan that has been both adopted by the Planning Board and endorsed by the Allendale Governing Body. Calm

development has not submitted any documentation in support of its allegation that the site is restricted from development.

Regarding the funding of the Borough's proposed affordable housing development on the Orchard Commons property, HMFA has reviewed the proposal and provided funding for development of the property using its standard underwriting guidelines to ensure proper funding appropriations.